

Filed for intro on 02/05/98
SENATE BILL 2766 By
Person

HOUSE BILL 3234
By DeBerry L

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 11; Title 39, Chapter 12; Section 39-13-204 and Title 40, Chapter 35, to create the "Anti-Gang and Street Terrorism Act of 1998."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-35-121, is amended by deleting the section in its entirety.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 12 is amended by adding Sections 3-7 of this act as a new part with such new part to be known as the "Anti-Gang and Street Terrorism Act of 1998".

SECTION 3.

(a) "Criminal gang" means any group of three (3) or more individuals who commit a continuing series of two (2) or more predicate criminal offenses which are undertaken in concert with each other.

(b) "Criminal gang activity" means a continuing series of two (2) or more predicate criminal offenses which are undertaken in concert with each other by any group of three (3) or more individuals.

(c) "Predicate criminal offense" means any violation of Tennessee law which is a crime of violence.

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(d) "Crime of violence" means any violation of Tennessee law where a person knowingly causes, or threatens to cause, death or bodily injury to another person or persons.

(e) "Acting in concert" means such conduct that would make one criminally responsible for the conduct of another pursuant to Tennessee Code Annotated, Sections 39-11-401, 39-11-402, and 39-11-403, or criminally liable as a co-conspirator under Tennessee Code Annotated, Section 39-12-103.

SECTION 4.

(a)(1) It is an offense for a person to:

(A) Commit or attempt to commit or solicit to commit a felony predicate criminal offense, and

(B) That offense is part of a continuing series of two (2) or more predicate criminal offenses which are undertaken by that person in concert with two (2) or more other persons.

(2) A person who commits the offense of criminal gang activity in this subsection is guilty of a felony one (1) classification higher than the classification of the highest underlying offense referenced in subdivision (a)(1)(A) of this section.

(b) A person who commits the offense of criminal gang activity where the underlying predicate offense is a Class A felony shall be guilty of a Class A felony, however the presumptive sentence shall be the maximum within the range if there are no enhancement or mitigating factors.

(c) Any sentence of imprisonment imposed pursuant to this section shall be consecutive to any sentence imposed for the violation of a predicate criminal offense.

SECTION 5.

(a) It is an offense for a person to unlawfully commit a felony violation of Tennessee Code Annotated, Section 39-17-417 or unlawfully attempt, solicit, or conspire to commit a felony violation of Tennessee Code Annotated, Section 39-17-417 while in possession of:

(1) A firearm as defined in Tennessee Code Annotated, Section 39-11-106(a)(11) or

(2) Any prohibited weapon under Tennessee Code Annotated, Section 39-17-1302.

(b) Any person who violates this section is guilty of a Class D felony and any sentence under this section must be served consecutively with any sentence for the underlying drug offense. No person convicted under this section shall be eligible for pre-trial diversion, judicial diversion, suspension of sentence, probation, sentencing under the Tennessee Community Corrections Act, Tennessee Code Annotated, Sections 40-36-101, et seq. or any other sentence involving release into the community.

SECTION 6.

(a)(1) It is an offense for a person to knowingly discharge a firearm from a vehicle and thereby cause death to another person.

(2) Any person who commits the offense under this subsection is guilty of a Class A felony.

(b)(1) It is an offense for a person to knowingly discharge a firearm from a vehicle and thereby cause serious bodily injury to another person.

(2) Any person who commits the offense under this subsection is guilty of a Class B felony.

(c)(1) It is an offense for a person to recklessly discharge a firearm from a vehicle in a manner that creates a substantial risk of bodily injury to another person or property damage to a habitation.

(2) Any person who is guilty of unlawful discharge of a firearm from a vehicle under this subsection commits a Class C felony.

(d)(1) It is an offense for a person to recklessly discharge a firearm from a vehicle in a manner that creates a substantial risk of property damage to a habitation.

(2) Any person who is guilty of unlawful discharge of a firearm from a vehicle under this subsection commits a Class D felony.

(e)(1) Any vehicle used by the owner, or anyone acting with the knowledge and consent of the owner, to facilitate a violation of this section shall upon conviction be forfeited.

(2) Property which is forfeitable based on this section shall be forfeited pursuant to and in accordance with the procedures for forfeiture in Tennessee Code Annotated, Section 39-11-116.

SECTION 7.

(a) A crime of violence committed while acting in concert with two (2) or more other persons shall be classified one classification higher than if it were committed alone. A Class A felony committed while acting in concert with two (2) or more other persons shall be classified as a Class A felony, however, the presumptive sentence shall be the maximum within the range if there are no enhancement or mitigating factors.

(b) The fact that the group was not a criminal gang is not a defense to prosecution under this statute.

SECTION 8. Tennessee Code Annotated, Section 39-13-204, is amended by adding the following new part:

(14) The murder was committed while acting in concert with two (2) or more other persons.

SECTION 9. If any provision of this act or the application thereof to any person or circumstances held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect July 1, 1998, the public welfare requiring it.